

Mortgages.

While mortgage notes are barred after three years, the covenant in a mortgage is only barred after twelve years. *Earnshaw v. Stewart*, 64 Md. 516.

A defectively executed and unrecorded mortgage, prevents the operation of the statute within twelve years. *Nelson v. Hagerstown Bank*, 27 Md. 75.

This section is not applicable to an equitable lien such as a mortgage which can only be barred by a lapse of twenty years. *B. & O. R. R. Co. v. Trimble*, 51 Md. 109; *Lingan v. Henderson*, 1 Bl. 281. See also, *Moreton v. Harrison*, 1 Bl. 491; *Ohio Life Ins. Co. v. Winn*, 4 Md. Ch. 254.

Generally.

A *fiery facias* issued on a judgment within the statutory period and renewed from term to term, though never delivered to the sheriff, keeps the judgment alive. *Hagerstown Bank v. Thomas*, 35 Md. 515. *Cf. Johnson v. Hines*, 61 Md. 127.

A bond held to be a "testamentary bond" within the meaning of this section. *State v. Boyd*, 2 G. & J. 372.

This section applies to a guardian's bond. *State v. Green*, 4 G. & J. 384; *Green v. Johnson*, 3 G. & J. 389; *Scaggs v. Reilly*, 88 Md. 65.

A "testamentary bond" held to be the thing in action, and limitations held to apply. *State v. Wright*, 4 H. & J. 148.

This section has no application when land has been bought with money supplied in part by the plaintiff on the faith of an oral promise to convey a portion of the land. *Cross v. Iler*, 103 Md. 595.

The statute only affects the remedy. The act of 1715, chapter 23, section 6, held to except the state and the United States from the operation of the statute. *Swearingen v. United States*, 11 G. & J. 377.

The Lord Proprietary held not to be barred by limitations in a suit on a bond. *Lady Baltimore v. Evans*, 4 H. & McH. 483. See also, *Kelly v. Greenfield*, 2 H. & McH. 144.

A lapse of more than 12 years since the breach of a covenant to give bonds for deferred payments, does not bar the right of action on the breaches of the covenant to pay annually, when the latter have occurred within twelve years before suit brought. *Keefer v. Zimmerman*, 22 Md. 287.

Where suit is brought on a bond within the twelve years, the bond is admissible in evidence at the trial after the expiration of the twelve years. *Hammond v. Denton*, 1 H. & McH. 200.

The object of this section was not to prohibit the putting in evidence of a bill or bond of over twelve years' standing, except in cases where it was itself the foundation of the action. When an express promise is proved, the bill or bond may be offered in evidence after twelve years. *Lamar v. Manro*, 10 G. & J. 61 (based on the act of 1715, ch. 23).

Where there was a stay of execution, a judgment was held not to be barred. *Johnson v. Hines*, 61 Md. 128.

This section held inapplicable because of the act of 1777, ch. 15, section 7, suspending temporarily the operation of the statute. *Ringgold v. Cannell*, 2 H. & McH. 410. See also, *Johns v. Lane*, 3 H. & McH. 398.

No execution can be issued on a judgment of condemnation in attachment after twelve years from its date. *Johnson v. Foran*, 59 Md. 461.

A plea that the debt did not accrue within three years, is inapplicable to a judgment. *Weber v. Fickey*, 47 Md. 201. And see *Duvall v. Fearson*, 18 Md. 505.

This section was held a bar in the following cases: *Harwood v. Rawlings*, 4 H. & J. 127; *Schell v. State*, 3 H. & J. 538; *Hall v. Creswell*, 12 G. & J. 48.

The act of 1818, ch. 216, repealed the saving clause in so far as it applied to persons "beyond the seas." The court construed the act of 1818 to give such persons three years from the time of the passage of the act within which to bring suit. *Garrison v. Hill*, 81 Md. 558. See also, *Mason v. Union Mills Co.*, 81 Md. 450; *Frey v. Kirk*, 4 G. & J. 521.

For cases dealing with this section, but now apparently inapplicable because of changes in the law, see *Knight v. Brawner*, 14 Md. 7; *Swearingen v. United States*, 11 G. & J. 373. (See also, section 7).

Cited but not construed in *Lambson v. Moffett*, 61 Md. 429; *Coombs v. Jordon*, 3 Bl. 327; *Willard v. Wood*, 135 U. S. 309.